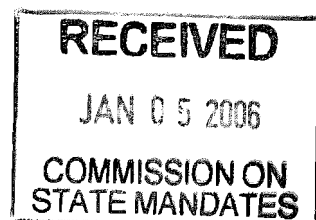


COMMENTS TO DRAFT STAFF ANALYSIS AND PROPOSED PARAMETERS AND GUIDELINES

Handicapped and Disabled Students – Reconsideration

04-RL-4282-01

Comments by the County of Stanislaus



The County of Stanislaus submits the following as its comments to the Draft Staff Analysis and Proposed Parameters and Guidelines.

Although the County of Stanislaus agrees with most of the provisions contained within the Draft Staff Analysis and Proposed Parameters and Guidelines, the County wishes to submit the following comments on some areas that it believes needs clarification.

Commission Staff is correct in that the Statement of Decision issued in 1990 did not identify all of the reimbursable activities pled in the test claim. At that time, it was common only to identify whether there was a mandate, and specify the activities in the parameters and guidelines. It has only been since the present Executive Director that all reimbursable activities are specified within the Statement of Decision. Therefore, to find that the now identified activities are reimbursable only to July 1, 2004, penalizes local government for a substantial change in practice before the Commission on State Mandates. Furthermore, same is not in keeping with the directive of the people contained in the Constitution, Article XIII B, Section 6, which mandates a subvention of funds to reimburse for the costs of the program. To do anything else does not provide full reimbursement to local government.

The Commission staff has also proposed, *sua sponte*, to vacate the original parameters and guidelines in this program, and adopt new parameters and guidelines in order to eliminate the vagueness and ambiguity which would result if the original parameters and guidelines were amended. The staff notes that this would result in an amended document with two sets of reimbursement periods.

However, the Commission, under either statute or regulation, does not have the authority to set aside and vacate existing parameters and guidelines in the within program. Additionally, contrary to the assertions of the Commission's staff that this would make it easier for local government, it in fact, can cause unintended consequences.

The State Controller's Office has been auditing the within program for several years. For some counties, the audit period goes back to the 1997-98 fiscal year. (Statement of Decision, p. 2.) To vacate the parameters and guidelines previously existing will only result in more confusion with regard to the pending audits, and contemplated and existing incorrect reduction claims.

Furthermore, there is also pending before the Commission a request to amend the original parameters and guidelines by the Counties of Los Angeles and Stanislaus. Any amendment would go back to July 1, 2001. (Statement of Decision, pp. 4-5.) At the request of Commission Staff, this matter was placed on the inactive list, pending the resolution of this reconsideration. Neither the County of Stanislaus nor the County of Los Angeles, to the best of my information and belief, has withdrawn said request to amend the parameters and guidelines. Thus, for the Commission to vacate the existing Parameters and guidelines will cause endless confusion.

The County of Stanislaus disagrees with the Draft Staff Analysis on page 9, concerning reimbursement to parents for services, cash and attorneys fees when parents prevail in due process hearings and in negotiated settlement agreements, which the Commission's Staff proposes to deny. One of the issues which occurs in the due process hearings, and attendant mediations and negotiations, is the provision of services to the child. Often times, if the parents disagree with the IEP, they will enroll the child in services at their own cost, and seek to recoup same through the due process hearing and settlement procedure. Specifically, it is common for the parents to believe that the child belongs in out of home placement, which is not provided for in the IEP. If the parents are ordered, or through settlement, are to be afforded, reimbursement for out of home placement, same is not damages. Rather, it is reimbursement for costs expended by the parents. These costs, together with attorneys fees paid to the parent, would not have been incurred had counties not been required to provide the mental health services to begin with. Thus, it is not a request for reimbursement for damages which the counties seek: rather it is reimbursement for costs paid to the parents because of the requirement that counties provide mental health treatment, rather than LEA's.

The County of Stanislaus concurs that to the extent county funds are used for Medi-Cal matching, same should not be considered as an offset to the program costs. However, on page 16 of the Draft Staff Analysis, the Commission's Staff finds that the following is the terminology to be used in the Parameters and Guidelines:

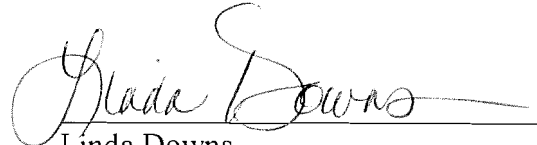
“Medi-Cal proceeds obtained from the state or federal government that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.”

However, in light of the numerous State Controller audits, and problems which have arisen there from, particularly since the auditors are not familiar with the programs being audited, the County of Stanislaus requests that the following language be inserted in stead:

“Medi-Cal proceeds obtained from the state or federal government, exclusive of county match, that pay for a portion of the county services provided to a pupil under the Handicapped and Disabled Students program in accordance with federal law.”

Hopefully, with the foregoing changes, making it perfectly clear that county match funds are not to be considered an offset, this issue will not arise when audits are performed of the program, and the auditors are unfamiliar with Medi-Cal funding issues. This clarification will save endless hours for both local governments and auditors when the program is reviewed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed this 3rd day of January, 2006 at Modesto, California.

A handwritten signature in cursive script, reading "Linda Downs", written over a horizontal line.

Linda Downs
Behavioral Health and Recovery
County of Stanislaus